

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: MEDTRONIC, INC.,
IMPLANTABLE DEFIBRILLATORS
PRODUCT LIABILITY LITIGATION.

Multidistrict Litigation No.
05-1726 (JMR/AJB)

**THIS DOCUMENT RELATES TO ALL
CASES**

PROTECTIVE ORDER

IT IS HEREBY ORDERED that Plaintiffs in the individual and putative class actions (hereinafter “Plaintiffs”) transferred to Multidistrict Litigation No. 05-1726 (hereinafter, “MDL 1726”) and Defendant Medtronic, Inc. (hereinafter “Medtronic”), and their respective counsel, shall be subject to this Protective Order, as follows:

1. All materials and copies, transcriptions, or other reproductions of materials (hereinafter, the “Materials”) produced in MDL 1726 pursuant to the discovery provisions of the Federal Rules of Civil Procedure, or by order of this Court, or otherwise, and which contain, describe, identify or refer to information of a confidential or proprietary nature or any trade secret or other confidential research, development, or commercial information, shall be stamped “CONFIDENTIAL” by the producing party and shall be subject to the provisions of this Protective Order.

2. Counsel for a party to MDL 1726 may challenge the “CONFIDENTIAL” designation made by the producing party of any of the Materials by first requesting a “meet and confer” with the producing party in an attempt to amicably resolve the challenge. In the event agreement cannot be reached, the challenging party may make

written application to this Court, which application shall describe with specificity the particular materials for which the designation is being challenged and set forth with specificity any and all grounds for the challenge, the party seeking to maintain the Materials as “CONFIDENTIAL” generally will bear the burden of proof as to such designation. The Materials designated “CONFIDENTIAL” shall continue to be treated as such and subject to the provisions of this Protective Order pending determination by the Court of the merits of any such challenge.

3. The Materials designated “CONFIDENTIAL” shall be used for purposes of MDL 1726 and the individual actions that have been transferred to MDL 1726 only and for no other action or purpose whatsoever and shall not, without leave of this Court, be disclosed to any person or entity other than this Court (under seal) and the parties to MDL 1726 and their counsel, each of whom shall be subject to the terms of this Protective Order.

4. The disclosure by counsel for a party to MDL 1726 of the Materials to paralegals and clerical staff employed by the disclosing counsel’s office is allowed under the terms of this Protective Order without limitation and without the need to execute an Affidavit. Such disclosure shall not constitute a violation or a waiver of the protections afforded by this Protective Order. Said paralegals and staff, as employed as agents of the disclosing counsel, are bound by this Order to the same extent as the parties and attorneys are bound. Disclosure by counsel for a party to MDL 1726 of the Materials to experts retained by the disclosing counsel shall not constitute a violation or waiver of the protections afforded by this Protective Order so long as the expert to whom disclosure is made has executed an Affidavit in the form attached hereto as Exhibit A. A copy of each

executed Affidavit shall be maintained by counsel for Plaintiffs or Medtronic, respectively.

5. In the event the Materials themselves, or the contents of the Materials designated “CONFIDENTIAL” are to be identified, discussed, or disclosed during a deposition taken in MDL 1726 of any person or entity other than those persons or entities described in paragraphs 3 and 4 above, the deponent shall be required to acknowledge on the record, before any identification, discussion or disclosure of the Materials occurs that he or she has been advised of and has agreed to be bound by the terms of this Protective Order.

6. During a deposition, any party may ask the reporter to designate certain portions of the testimony as Confidential, in which case the Confidential portions shall be separately transcribed and labeled as Confidential. In addition, within thirty (30) days after a copy of the transcript is delivered to the parties, counsel may designate the entirety or any specified portion of the transcript or exhibits thereto as Confidential by letter to the opposing party. Until such thirty (30) day period expires, the entirety of such transcripts and all exhibits thereto shall be treated as Confidential and subject to this Order. After such thirty (30) day period expires, such transcripts, exhibits or portions designated as Confidential shall be treated as such under this Order. If no such designation is made within thirty (30) days, such transcripts or exhibits shall not be subject to this Order, except for good cause shown by the designating party.

7. In the event that counsel for a party identifies, discusses, or discloses the Materials or the contents of the Materials designated “CONFIDENTIAL” during the course of pre-trial or trial proceedings, counsel for the producing party may at that time,

or after such identification, discussion, or disclosure, request that the Materials or the contents of the Materials designated “CONFIDENTIAL” be filed under seal with this Court or any Transferor Court and be subject to the terms of this Protective Order.

8. In the event the Materials designated as “CONFIDENTIAL” or transcripts or other things wherein the Materials or the contents of the Materials designated “CONFIDENTIAL” are identified, discussed, or disclosed, are filed electronically or otherwise or are otherwise deposited with the Clerk of this Court or any Transferor Court, the Materials or the contents of the Materials shall not be filed electronically and the Materials shall be filed or deposited with the Clerk of this Court or any Transferor Court in a sealed envelope bearing the following designation:

“CONFIDENTIAL: THE CONTENTS OF THIS ENVELOPE ARE NOT TO BE SCANNED AND ARE SUBJECT TO A PROTECTIVE ORDER OF THIS COURT AND SHALL NOT BE SHOWN TO ANY PERSONS OTHER THAN A JUDGE OF THIS COURT OR AN ATTORNEY IN THIS CASE.”

9. Counsel for a party shall not, in the presence of the jury, comment on the reasons or motivation for designating the Materials as “CONFIDENTIAL” without first having obtained permission of the Court to do so.

10. This Protective Order shall be binding throughout and after final adjudication of this action, including but not limited to, any action subject to MDL 1726 that has been transferred back to the Transferor Court for trial or any other proceedings, any final adjudication of any appeals and petitions for extraordinary writs.

11. Within thirty (30) days after final adjudication of MDL 1726 or any proceeding before a Transferor Court, the Clerk of this Court or the Clerk of any Transferor Court shall return under seal to counsel for the producing party all Materials

designated "CONFIDENTIAL" including, without limitation, all transcripts or other things which were subject to the provisions of this Protective Order, and within thirty (30) days after final adjudication of MDL 1726 and any proceeding before a Transferor Court, counsel then having possession, custody or control of such materials, transcripts, or other things designated "CONFIDENTIAL" shall verify the complete destruction or return to counsel for the producing party of all such Materials by executing and mailing to counsel for the producing party an Affidavit in the form attached hereto as Exhibit B. A copy of each such executed Affidavit shall be maintained by counsel for Plaintiffs or Medtronic, respectively.

12. Nothing in this Protective Order shall be construed to preclude any party from seeking additional protection for the Materials or the contents of the Materials designated as "CONFIDENTIAL" or from otherwise seeking a modification of this Protective Order.

13. Notwithstanding the date upon which the Court enters this Protective Order, any confidentiality agreement or protective order entered into by counsel for any action subject to MDL 1726 while such action is or was pending in the Transferor Court shall remain in full force and effect until otherwise terminated by the terms of the agreement or order or by mutual agreement of counsel for the parties.

14. Nothing in this Protective Order shall be construed to prevent this Court from disclosing any facts relied upon by it in making or rendering any finding, ruling, order, judgment or decree of whatever description.

15. Each party shall bear its own costs for complying with this Protective Order.

DATED: January 23, 2006

s/ Arthur J. Boylan
ARTHUR J. BOYLAN
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

AFFIDAVIT OF _____

STATE OF _____)
) ss:
COUNTY OF _____)

Before me, the undersigned Notary Public, in and for said County and State,
personally appeared _____, who after first being duly sworn,
states as follows:

1. My name is _____. I am over the age of 18 years and am
a resident of _____ County, _____. I make this Affidavit
based upon my personal knowledge, and I am competent to testify to the matters stated
herein.

2. I am aware that a Protective Order has been entered in *In re: Medtronic, Inc.,
Implantable Defibrillators Products Liability Litigation.*, in the United States District
Court for the District of Minnesota; Multidistrict Litigation No. 05-1726 (JMR/AJB). A
copy of that Protective Order has been shown to me, and I have read and understand its
contents.

3. By signing this Affidavit, I promise that I will use the materials and
contents of the materials designated “confidential” pursuant to the above-described
Protective Order for the purpose of assisting counsel for a party to the above-described
civil action in the adjudication of that action and/or any proceedings before the
Transferor Court (collectively, the “Litigation”) and for no other purpose.

4. By signing this Affidavit, I also promise that I will not communicate,
disclose, discuss, identify, or otherwise use materials or the contents of materials

designated “confidential” pursuant to the above-described Protective Order with, to, or for any person or entity other than the Court, a party to the above-described multidistrict litigation, counsel for a party to the Litigation, including other counsel, paralegals, and clerical staff employed in his or her office, persons permitted by the above-described Protective Order to attend depositions taken in the Litigation, and persons or entities assisting such counsel who have executed an affidavit in the same form as this Affidavit.

5. By signing this Affidavit, I also promise that I will not copy, transcribe, or otherwise reproduce, or cause to be copied, transcribed, or otherwise reproduced, by any means whatsoever, any materials or the contents of any materials designated “confidential” pursuant to the above-described Protective Order except to the extent to which I am directed to do so by counsel for a party to the Litigation, in which case all such copies, transcriptions, or reproductions shall be made solely for my own use in connection with my work in the above matter. I further promise at the conclusion of the Litigation to deliver upon request all materials (originals and copies) designated “confidential” to the counsel who originally directed that said materials be provided to me.

6. I understand that, by signing this agreement, I am agreeing to subject myself to the jurisdiction of this Court and the Transferor Court.

7. I understand that any use or distribution of the materials or contents of the materials designated “confidential” pursuant to the above-described Protective Order in any manner contrary to the provisions of the Protective Order will subject me, among other things, to the summary sanctions of this Court and the Transferor Court for contempt.

Further Affiant sayeth not.

Signature of Affiant

Subscribed and sworn to before me,
this ____ day of _____, 200 ____.

Notary Public

EXHIBIT B

AFFIDAVIT OF _____

STATE OF _____)
) ss:
COUNTY OF _____)

Before me, the undersigned Notary Public, in and for said County and State,
personally appeared _____, Esq., who after first being duly
sworn, states as follows:

1. My name is _____. I am over the age of 18 years and am
a resident of _____ County, _____. I make this Affidavit
based upon my personal knowledge, and I am competent to testify to the matters stated
herein.

2. I have requested and received from _____ all of the
materials, transcripts, and other things described in *In re: Medtronic, Inc., Implantable
Defibrillators Products Liability Litigation.*, in the United States District Court for the
District of Minnesota; Multidistrict Litigation No. 05-1726 (JMR/AJB) and any
proceedings held before the Transferor Court.

3. I have either destroyed or have attached hereto all of the materials,
transcripts, and other things, including those materials which were returned to me by
_____ in accordance with the preceding paragraph, and as described in
Paragraph 11 of the Protective Order which was entered by the Court in *In re: Medtronic,
Inc., Implantable Defibrillators Products Liability Litigation.*, in the United States
District Court for the District of Minnesota; Multidistrict Litigation No. 05-1726
(JMR/AJB).

Further Affiant sayeth not.

Signature of Affiant

Subscribed and sworn to before me,
this ____ day of _____, 200 ____.

Notary Public